IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 336 of 2003.
Date of Decision: November 09, 2006.

Jai Narain & Ors.

....**Appellants.**

through
Mr. Rameshwar Malik, Advocate

Versus

Boda Ram alias Bod Raj

...**Respondent**
through
Mr. Jaswant Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.

This Regular Second Appeal is directed at the behest of the defendants against whom suit for possession of a small piece of land measuring about five marlas, has been decreed by both the Courts vide their impugned judgments and decrees.

[2]. The plaintiff-respondent, who belongs to down-trodden section of the Society, was allotted the land in dispute in village Datal, Tehsil Narnaul, District Mohindergarh at the time of consolidation proceedings for residential purposes. In order to earn his livelihood, the respondent went and started residing in Delhi. Alleging that about six months before filing of the suit, the appellants who belong to upper caste, encroached upon the said

piece of land and have raised construction thereupon, the respondent-plaintiff filed the present suit.

[3]. The appellants denied that the respondent-plaintiff is the owner of the suit property. According to them, the same was occupied by their fore-fathers in the year 1950. Alternatively, the appellants pleaded that they have become owners of the suit property by way of adverse possession.

[4]. On the basis of the pleadings of the parties, learned trial Court framed the following issues on 5.5.1993:-

> "1. Whether the suit land detailed in para no. 1 of the plaint was allotted to the plaintiff, if so to what effect?OPP
> 2. Whether the suit of the plaintiff is within limitation?OPD.
> 3. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
> 4. Relief".

[5]. Thereafter the following additional issue was also framed on 25.9.2000:-

> "4-A. Whether the defendants have become owners of the suit property by way of adverse possession?OPD".

[6]. Relying upon the entries in the revenue record, especially Jamabandis for the years 1973-74 to 1988-89 (Exs. P1 to P4), both the courts have held the respondent-plaintiff to be owner in possession of the suit land. No contrary evidence except the oral and bald statement, has been led by the appellants to rebut the presumption of correctness attached to the afore-stated entries in the revenue record. In fact, learned counsel for the appellants has not seriously disputed the ownership of the respondent-

plaintiff qua the suit property. Consequently, no exception can be made to the concurrent findings of fact returned by the Courts below on Issue No.1 holding that the plaintiff is owner of the subject property.

[7]. Learned counsel for the appellants, however, has vehemently contended that on the basis of the admitted facts and evidence on record, Issue No.4-A deserves to be answered in favour of the appellants. If issue No.4-A is answered in favour of the appellants, it is obvious that Issue No.2 would also stand answered in their favour. In order to prove that the appellants have become owners in possession of the suit property, it is argued that the respondent-plaintiff has himself admitted in his deposition that he is living in Delhi from about 30 years and he has, thus, impliedly admitted that the appellants are in possession of the subject property from last 30 years. It is also argued that the appellants have produced P.K.Dabas, a Building Expert as DW4 and as per his report and deposition, the construction raised over the plot in question is about 45 years old. According to learned counsel for the appellants no reliance could be placed by the Courts below on the statement of Pushkar Ram Gupta, Building Expert examined by the respondent-plaintiff as PW3 for the reason that he was not produced as a witness in affirmative and was rather examined in rebuttal evidence, to which the appellants raised a specific objection which has not been met by the Courts below. Reliance has been placed upon Order 18 Rule 3 of the Code of Civil Procedure.

[8]. In addition to the above-stated contention on merits, learned counsel for the appellants has also argued that the trial Court has not returned separate findings under Issue No.4-A, therefore, the case deserves to be remanded for afresh decision. Reference to Order 41 Rule 31 C.P.C.

has also been made to contend that the learned first Appellate Court too has failed to deliver its judgment in accordance with that provision. Learned counsel for the appellants has also placed reliance upon the judgments of this Court in (i) **National Fertilizers Ltd. V Municipal Committee, Bhatinda and Anr., AIR 1982 Punjab and Haryana, 432, (ii) Mehla v Sita & Ors., 2001(1) PLJ, 85 and (iii) Darshan Singh Sahota v State of Punjab & Ors. 2002(2) PLR, 131.** He has also relied upon a judgment of the Hon'ble Supreme Court in **Rattan Dev v Pasam Devi (2002) 7 SCC, 441.**

[9]. After hearing learned counsel for the parties at length and upon perusal of the impugned judgments, I do not find any merit in this appeal. True it is, that Issue No.4-A has not been separately decided by the trial Court. This contention was raised by the appellants before the first appellate Court and the same has been elaborately dealt with in paras No. 9 to 13 of the judgment dated 9.12.2002 passed by the learned District Judge. It has been observed and rightly so that though Issue No.4-A, which was framed later on, went unnoticed by the trial Court, however, the entire evidence led by the appellants to prove their `adverse possession' has been discussed and a specific finding has been returned by the trial Court on this point against the appellants while deciding Issue No.2. Thus, no *pre-judice* has been caused to the appellants. The first Appellate Court thereafter has independently considered the evidence brought on record to prove adverse possession and has categorically held that the appellants have failed to establish their possession over the subject property for more than 12 years and/or that their alleged possession was every hostile to the title or knowledge of the respondent-plaintiff. It being a pure finding of fact, based

upon appraisal and re-appraisal of evidence on record, does not give rise to any substantial question of law which may require consideration by this Court.

[10]. So far as the statement of P.K.Dabas – Building Expert produced by the appellants is concerned, learned first appellate Court has observed that despite being a qualified engineer, he failed to produce any book or literature to show that there are no tests available to know the age of the building material. No reliance can be, thus, placed upon the opinion which was based upon mere physical observation of the building. In a case where both the parties have produced their respective Building Experts, onus was upon the appellants to lead some unimpeachable evidence supported with scientific reasons to prove that the construction raised by them over the suit property was more than 12 years old. In the absence of any such evidence, the Courts below have rightly not relied upon the statement of an Expert, who might be having natural tendency to depose in favour of the party, who had hired him.

[11]. The hyper-technical contention that the statement of the Building Expert produced by the respondent-plaintiff could not be relied upon as he was examined while leading rebuttal evidence, without reserving right to lead the same, is also totally misconceived. The onus to prove Issue No. 4-A was upon the appellants. Except the statement of P.K.Dabas, which the Courts below have discarded for more than one good reasons, no other evidence has been led by the appellants to prove that the building constructed by them over the disputed plot is more than 12 years old and, thus, even if the statement of the Building Expert examined by the respondent-plaintiff is over-looked, yet Issue No.4-A and consequently

Issue No.2 remain answered against the appellants. The orders passed by the learned trial Court on 15.5.1998, as reproduced in the Grounds of Appeal, and to which a repeated reference has been made by learned counsel for the appellants, could not come in the respondent's way of producing the rebuttal evidence.

[12]. The reliance placed by learned counsel for the appellants upon the judgments of this Court in **National Fertilizers Ltd's case (supra)** is wholly misplaced as the additional Issue No.4-A was got framed by the appellants on 25.9.2000 whereas the respondent-plaintiff had closed his evidence in affirmative on 24.11.1998. He had, thus, no occasion either to lead evidence on Issue No.4-A or to reserve his right to lead evidence in rebuttal, in terms of Order 18 Rule 3 CPC.

[13]. The well reasoned judgment passed by the learned first Appellate Court fully satisfies the principles laid down by this Court in **Mehla's case (supra).** Similarly, the findings returned by the learned Appellate Court being based upon correct appreciation of the evidence on record, it can not be said that the principles laid down by this Court in **Darshan Singh Sahota's case (supra**) have been ignored or over-looked.

[14]. In view of the fact that the courts below have thoughtfully considered the evidence on record and have evaluated the same by following correct principles of law, it can not be said that there is any non-application of mind on their part. Thus, the dictum of the Hon'ble Supreme Court in **Rattan Dev's case (supra)** is also not attracted to the facts and circumstances of the case in hand.

[15]. Consequently, and for the reasons afore-stated, I do not find any merit in this appeal which is accordingly dismissed with costs of

Rs.5000/-.

[16]. Before parting with the judgment, this Court can not over-look the fact that the respondent-plaintiff belongs to the poorest section of Society and the only small residential plot allotted to him in the consolidation proceedings, has been encroached upon by the Appellants belonging to an influential section. The respondent-plaintiff is fighting the legal battle since 1991. His dreams to have his own hutment have been nearly shattered by the appellants. Consequently and in order to ensure that the decrees passed by the Courts below which stand upheld by this Court as well, do not remain ***brutum fulmen*** only, it is directed that in case the appellants do not hand-over peaceful vacant possession of the subject property to the respondent-plaintiff within a period of three months from today, the Executing Court shall adopt immediate lawful coercive methods including an appropriate order to provide police assistance to secure the possession of the disputed property in favour of the respondent-plaintiff.

November 09, 2006. **(SURYA KANT)**
dinesh **JUDGE**